

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
JOSE SCOTT,

Petitioner,

v.

18-CV-344-LJV

JEFF SESSIONS, Attorney General of the United States;

THOMAS E. FEELY, Field Office Director for Detention and Removal, Buffalo Field Office, Bureau of Immigration and Customs Enforcement; and

JEFFREY SEARLS, Assistant Officer in Charge, Buffalo Federal Detention Facility,

Respondents.

Respondent's Notice of Supplemental Authority

Respondents hereby give notice to the Court of the amended opinion in *Hechavarria v. Sessions*, --- F.3d ---, 2018 WL 2306595 (2d Cir. 2018).

While Respondents cited to the *Hechavarria* case, a decision issued on May 16, 2018, in their Memorandum of Law in support of their habeas response, the Second Circuit's decision was amended on May 22, 2018. The question before the Court was whether a "criminal alien" is detained under 8 U.S.C. § 1231(a), as opposed to 8 U.S.C. § 1226(c), when he has exhausted his options for administrative review, even though he has a stay pending resolution of his appeal

in the appellate court. 2018 WL 2306595 at *1. The Court held that when a stay has been issued, an immigrant cannot be held pursuant to § 1231(a) because he is not in the “removal period” contemplated by statute until his appeal is resolved the appellate court. *Id.* The Court found that Hechavarria’s detention was, therefore, governed by § 1226(c). 2018 WL 2306595 at *7. In a footnote issued in the amended decision, the Second Circuit stated that because it reviewed Hechavarria’s habeas petition after it had issued a stay of removal in his underlying petition for review, it need not decide the contours of judicial review during detention pursuant to the government’s forbearance policy in the Second Circuit. *Id.*, n. 3.

This holding by the Second Circuit supports Respondents’ position that Mr. Scott is currently detained pursuant to 8 U.S.C. § 1231(a) as a stay has not been issued in his case, but rather the only impediment to his removal is the forbearance policy as a result of the filing of his Petition for Review in the Second Circuit.

DATED: Washington, D.C., June 5, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2018, I caused the foregoing to be filed with the Clerk of the United States District Court for the Western District of New York using its CM/ECF system.

I further certify that on June 5, 2018, I mailed a copy of the foregoing by the United States Postal Service, to the following non-CM/ECF participant:

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Kevin J. Conway

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